

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

CROSSROADS SYSTEMS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
3PAR, INC.,	§	
AMERICAN MEGATRENDS, INC.,	§	
RORKE DATA, INC.,	§	C.A. 1:10-CV-652-SS
D-LINK SYSTEMS, INC.	§	
CHELSIO COMMUNICATIONS, INC. (a	§	Jury Demanded
Delaware corporation),	§	
DATACORE SOFTWARE CORPORATION,	§	
ISTOR NETWORKS, INC., and	§	
CHELSIO COMMUNICATIONS, INC. (a	§	
California corporation),	§	
	§	
Defendants.	§	

**DEFENDANT RORKE DATA, INC.'S CONCISE  
STATEMENT OF NON-INFRINGEMENT**

Pursuant to the Court's Order, Defendant Rorke Data, Inc. ("Rorke") files its concise statement of non-infringement. Plaintiff Crossroads Systems, Inc. ("Crossroads") alleges that certain of Rorke's products infringe Claims 1-4 and 7-14 of U.S. Patent No. 6,425,035 (the "'035 Patent"). Specifically, Crossroads alleges that Rorke's Galaxy RAID systems infringe the '035 Patent. Crossroads identifies the following allegedly infringing Rorke products: Galaxy Aurora Appliance; Galaxy Aurora LS Appliance; Galaxy HDX3 Appliance; Galaxy HDX2 Appliance; and Galaxy 3G Appliance.

For the following reasons, Rorke's Galaxy RAID systems do not infringe any claims of the '035 Patent, including Claims 1-4 and 7-14. Attached as Exhibits A and B are charts comparing the claims of the '035 Patent with the accused Rorke products, demonstrating that the accused Rorke products do not infringe the claims of the '035 Patent.

**I. RORKE'S PRODUCTS ARE COVERED BY LICENSES TO THE '035 PATENT.**

Rorke does not manufacture **any** of the Galaxy RAID systems that it sells. Rather, Rorke purchases these systems directly from third-party manufacturers, many of whom have entered into license agreements with Crossroads that expressly include licenses to the '035 Patent for the manufacturers' customers. Further, Rorke does not modify, customize or otherwise alter the Galaxy RAID systems that it purchases from these third-party manufacturers. It sells them "as is."

For example, Rorke purchases its Galaxy RAID systems from storage router manufacturers such as Promise Technology, Inc. ("Promise"). The specific product that Rorke purchases from Promise is Galaxy 3G storage routers. After purchasing the Galaxy 3G storage routers from Promise, Rorke simply re-brands those storage routers by including a Rorke label with the existing manufacturer's label, *e.g.*, Promise. Rorke does not alter or modify the Galaxy 3G storage routers that it purchases from Promise. After adding its company information, Rorke resells the Promise storage routers to other companies, and provides customer service and support for those products.

Several years ago, Crossroads entered into a confidential settlement agreement with Promise to resolve the lawsuit styled *Promise Technology, Inc. v. Crossroads Systems, Inc. and Crossroads Systems (Texas), Inc.*, CA No. C07-06128JF, filed on December 4, 2007 in the U.S. District Court for the Northern District of California. With Crossroads' and Promise's permission, Rorke's counsel received and reviewed a copy of the confidential Crossroads/Promise settlement agreement. Rorke believes that it is covered under the license in the settlement agreement between Crossroads and Promise. Accordingly, Rorke's Galaxy 3G storage routers cannot infringe any claims of the '035 Patent based on the license covering that

patent previously granted to Promise. In addition, Rorke's accused products cannot infringe any claims of the '035 Patent under the patent exhaustion doctrine.

## **II. RORKE'S PRODUCTS DO NOT MEET THE CONFIGURATION REQUIRED BY THE CLAIMS OF THE '035 PATENT.**

The '035 Patent is directed to a storage router that provides virtual local storage on a remote storage device. To do this, Claims 1-4 and 7-14 of the '035 Patent require a storage router to have a certain configuration: buffer, a first controller, a second controller, and a supervisor unit. Specifically, Claims 1-4 and 7-14 (the "Asserted Claims") require that the storage routers provide "access controls" such as "LUN masking." The Asserted Claims also require that the storage routers have a supervisor unit "coupled" to the first and second controllers, and a buffer, wherein the "supervisor unit" must be able to process data (1) involving mapping between the fibre channel and SCSI bus; and (2) applying access controls and routing functions. *See* '035 Patent, col 5, ll. 24 – 27.

Crossroads alleges that Rorke's Galaxy Aurora, Galaxy Aurora LS, Galaxy HDX3, Galaxy HDX2, and Galaxy 3G products infringe the Asserted Claims of the '035 Patent. None of the above-identified products can or do infringe any of the Asserted Claims based on the following:

1. The Galaxy HDX3 and HDX2 products do not have "access controls" because they do not offer LUN masking capability, as Crossroads incorrectly alleges. LUN masking capability is required by the Asserted Claims.

2. Crossroads has not met its burden of showing that any of the accused Rorke products has a supervisor unit, as required by the Asserted Claims. Crossroads merely makes conclusory allegations that the Rorke products "contain[] a processor coupled as claimed."

3. Even assuming that the accused Rorke products contain a supervisor unit, Crossroads has not met its burden of showing that the hypothetical supervisor unit processes data (1)

involving mapping between the fibre channel and SCSI bus; and (2) applying access controls and routing functions. The Asserted Claims require these functions. Crossroads has not shown that the accused Rorke products have these functions.

Accordingly, the accused Rorke products do not meet the configuration required by the Asserted Claims.

### **III. CONCLUSION.**

For the foregoing reasons, and further detailed in the attached Exhibits A and B, Rorke respectfully submits that its Galaxy Aurora, Aurora LS, Galaxy HDX3, Galaxy HDX2, and Galaxy 3G products do not infringe any of the Asserted Claims in the '035 Patent.

Respectfully submitted,

/s/ Lisa H. Meyerhoff  
Lisa H. Meyerhoff  
Texas Bar No. 14000255  
Email: [Lisa.Meyerhoff@Bakermckenzie.com](mailto:Lisa.Meyerhoff@Bakermckenzie.com)  
Myall S. Hawkins  
Texas Bar No. 09250320  
Email: [Myall.Hawkins@Bakermckenzie.com](mailto:Myall.Hawkins@Bakermckenzie.com)  
Tan Pham  
Texas Bar No. 24046628  
Email: [Tan.Pham@Bakermckenzie.com](mailto:Tan.Pham@Bakermckenzie.com)  
Baker & McKenzie LLP  
711 Louisiana, Suite 3400  
Houston, Texas 77002  
Tel: (713) 427-5005  
Fax: (713) 427-5099

ATTORNEYS FOR DEFENDANT RORKE  
DATA, INC.

### **CERTIFICATE OF SERVICE**

I hereby certify that, on the 11th day of January 2011, I served "Defendant Rorke Data, Inc.'s Concise Statement of Non-Infringement" on the following counsel by electronic mail:

Elizabeth Brown Fore  
Email: ebrownfore@sprinklelaw.com  
Steven Robert Sprinkle  
Email: ssprinkle@sprinklelaw.com  
Sprinkle IP Law Group  
1301 W. 25th Street, Suite 408  
Austin, TX 78705

Patrick Taylor Weston  
Email: patrick.weston@bingham.com  
James G. Snell  
Email: jim.snell@bingham.com  
Bingham McCutchen LLP  
1900 University Ave.  
East Palo Alto, CA 94303-2223

Price Ainsworth  
Email: price@ainsworth-law.com  
Law Offices of Price Ainsworth, P.C.  
48 East Avenue  
Austin, TX 78701

Scott King Field  
Email: scott@thefieldlawfirm.com  
The Field Law Firm  
9442 Capital of Texas Hwy. North  
Arboretum Plaza One, Suite 500  
Austin, TX 78759

William D. Chapman  
Email: wchapman@jbbclaw.com  
Julander, Brown, Bollard & Chapman  
9110 Irvine Center Dr.  
Irvine, CA 92618

George W. Webb , III  
Email: george.webb@dechert.com  
Steven R. Daniels  
Email: steven.daniels@dechert.com  
W. Bryan Farney  
Email: bryan.farney@dechert.com  
Dechert LLP  
300 W. 6th St., Suite 2010  
Austin, TX 78701

Christine Yang  
Email: cyang@sjclawpc.com  
Duncan Palmatier  
Email: dpalm@dpalmlaw.com  
Ingrid Yang  
Email: iyang@sjclawpc.com  
Victoria Hao  
Email: vhao@sjclawpc.com Law Offices of S.J.  
Christine Yang  
17220 Newhope Street, Suite 101-102  
Fountain Valley, CA 92708

Eric B. Meyertons  
Email: emeyertons@intprop.com  
Chris L. Drymalla  
Email: cdrymalla@intprop.com  
Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.  
700 Lavaca, Suite 800  
Austin, TX 78701

Keith Miles Aurzada  
Email: keith.aurzada@bryancave.com  
Bryan Cave LLP  
2200 Ross Avenue, Suite 3300  
Dallas, TX 75201

Karl O. Bayer , Jr.  
Email: karl@karlbayer.com  
Karl Bayer, Attorney  
8911 N. Capital of Texas Hwy., Suite 2120  
Austin, TX 78759-7200

/s/ Lisa H. Meyerhoff